

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

UNILOC USA, INC. and UNILOC)
LUXEMBOURG S.A.,)
)
Plaintiffs,) Judge Leonard Davis
)
v.) Case No. 6:12-cv-809-LED
)
DASSAULT SYSTÈMES SOLIDWORKS) JURY TRIAL DEMANDED
CORPORATION,)
)
Defendant.))
)
)

**DECLARATION OF CARLOS A. RODRIGUEZ IN SUPPORT OF
DEFENDANT'S MOTION TO TRANSFER VENUE TO THE
DISTRICT OF MASSACHUSETTS PURSUANT TO 28 U.S.C. § 1404(a)**

I, Carlos A. Rodriguez, declare as follows:

1. I am an associate attorney with Quinn Emanuel Urquhart & Sullivan LLP, counsel for Defendant Dassault Systèmes SolidWorks Corporation (“SolidWorks”) in the above-captioned matter.

2. I submit this declaration in support of Defendant's Motion to Transfer Venue to the District of Massachusetts Pursuant to 20 U.S.C. § 1404(a). I have personal knowledge of the facts set forth in this declaration and, if called to testify as a witness, could and would do so competently.

3. Attached hereto as Exhibit 1 is a true and correct copy of U.S. Pat. No. 5,579,222 (the “'222 Patent”).

4. I have reviewed the U.S. patent prior art references cited on the face of the '222 patent.

5. Attached hereto as Exhibit 2 is true and correct copy of a January 27, 1998 Boston Globe article titled “Compaq will buy Digital in a record \$9.6b deal.”¹ The article includes a brief corporate history of Digital Equipment Corporation (“DEC”), a now defunct computer company founded and headquartered in Massachusetts. According to the article, DEC was at one time Massachusetts' largest employer, and the second largest computer company in the world.

6. Out of eight prior art patents cited on the face of the '222 patent, the following three were assigned to DEC:

- U.S. Pat. No. 4,937,863, titled “Software Licensing Management System”

¹ Available at http://www.boston.com/globe/business/packages/compaq_dec/ (last accessed 2/6/2013).

- U.S. Pat. No. 5,204,897, titled “Management Interface For License Management System”
- U.S. Pat. No. 5,260,999, titled “Filters In License Management System”

True and correct copies of these references are attached hereto, respectively, as Exhibits 3, 4 and 5.

7. Based on the number of prior art references assigned to DEC listed on the face of the '222 patent, all of which relate to concurrent licensing systems, it appears that DEC was a pioneer in this field.

8. Another prior art patent listed on the face of the '222 patent, U.S. Pat. No. 4,924,378, was assigned to Prime Computer, Inc., a company based in Natick, Massachusetts. A true and correct copy of this reference, titled “License Management System And License Storage Key,” is attached hereto as Exhibit 6.

9. SolidWorks expects to find additional prior art arising from DEC and Prime Computer's work in the field of distributed software licensing, and intends to call the inventors of the prior art patents as witnesses in this case due to their knowledge of the state of the art.

10. The following are the names and locations of the inventors of the prior art patent assigned to Prime Computer Inc., as listed on the face of that reference: Antoinette F. Hershey of Acton, Massachusetts; Andrew H. French of Lexington, Massachusetts; and Christopher P. Boire of Westborough, Massachusetts.

11. The following are the names and locations of the inventors of the prior art patents assigned to DEC, as listed on the face of the patents: Gregory Robert of Nashua, New Hampshire; David Chase of Wellesley, Massachusetts; Ronald Schaefer of Acton, Massachusetts.

12. An additional inventor named on the DEC prior art patents is Robert M. Wyman. Attached hereto as Exhibit 7 is a true and correct copy of what appears to be Mr. Wyman's Google+ profile. According to the profile, Mr. Wyman currently lives in New York and works for Google, Inc.

13. Attached hereto as Exhibit 8 are excerpts of the prosecution history of the '222 patent. The Notice of Allowance for the '222 patent, pages 5-9 of Exhibit 8, is directed to prosecuting attorney Bruce D. Sunstein in Boston, Massachusetts. According to his web profile, Mr. Sunstein is currently a partner at Sunstein Kann Murphy & Timbers, LLP, a firm located in Boston, Massachusetts. Attached hereto as Exhibit 9 are true and correct copies of selected pages from the firm's website.

14. Attached hereto as Exhibit 10 are true and correct copies of relevant excerpts from LexisNexis Accurint Finder Reports showing California addresses for Bradley Davis and Craig Etchegoyen. These reports were attached to a declaration in support of a motion to transfer venue filed by the defendant in *Uniloc v. Rackspace*, No. 6:12-CV-375. According to Uniloc's website, Brad Davis is CEO of Uniloc, and Craig Etchegoyen is Chief Technologist.²

15. Attached hereto as Exhibit 11 is a true and correct copy of a declaration submitted by Sean Burdick, Patent Counsel for Uniloc USA, on Sept. 13, 2012, in support of Uniloc's opposition to the motion to transfer venue in the *Uniloc v. Rackspace* matter referenced above. The declaration asserts that Uniloc's headquarters were transferred from Irvine, CA to Plano, TX in April 2012. Mr. Burdick states that he and Uniloc's CFO now work from Uniloc's new headquarters in Plano. However, Mr. Burdick does not deny that Brad Davis and Craig

² Available at <http://www.uniloc.com/index.php/company/> (last accessed 2/8/2013).

Etchegoyen continue residing in and working from California. Mr. Burdick states that a total of five employees work full-time at the Plano location.

16. Attached hereto as Exhibit 12 is a true and correct copy of the Patent Assignment Details for the latest assignment of the '222 patent available on the website of the U.S. Patent Office. The assignee named in the document is Uniloc Luxembourg, S.A. The correspondence name and address is: Amanda Ivey, 2151 Michelson Drive Suite 100, Irvine, CA 92612.

17. Pages 1-6 of Exhibit 8 comprise a petition which is part of the file history of the '222 patent. The petition, requesting that certain document be expunged from the file, was filed on January 5, 2012 by an attorney acting on behalf of Uniloc. The address provided by the attorney is 2151 Michelson Drive Suite 100, Irvine, CA 92612.

18. Attached hereto as Exhibit 13 is a true and correct copy of maintenance fee records for the '222 patent available on the website of the U.S. Patent Office. The address listed for fee purposes is the address of Sunstein Kann Murphy & Timbers, LLP in Boston, Massachusetts.

19. I have reviewed the publicly available Patent Office records regarding the '222 patent, including the file history, maintenance fee records, and assignment records. It appears that Uniloc has never provided a Texas address to the Patent Office.

20. The median time from filing to disposition in civil cases filed in the Eastern District of Texas is 9 months; in Massachusetts it is 8.7 months for cases filed in the District of Massachusetts. The median time to trial in the Eastern District of Texas is 23.9 months; in Massachusetts it is 32.3 months. *Federal Court Management Statistics*, December 2011.³

³ Available at <http://www.uscourts.gov/Statistics/FederalCourtManagementStatistics/DistrictCourtsDec2011.aspx>.

21. On January 31, 2013 I participated on a conference call with attorneys representing defendants in parallel cases filed by Uniloc asserting the '222 patent.

22. During the call, an attorney for each defendant confirmed that its client does not oppose SolidWorks' motion to transfer venue, and some defendants indicated that they would file motions to transfer their own cases.

23. Attached hereto as Exhibit 14 is a slip copy of the Federal Circuit decision in *In re EMC Corp.*, No. 13-142 (Fed. Cir. Jan. 29, 2013).

24. Attached hereto as Exhibit 15 is a slip copy of the court's decision in *Geotag, Inc. v. Starbucks Corp. et al.*, No. 2:10-cv-572, slip op. (E.D. Tex. Jan. 14, 2013).

25. Two judicial emergencies have been declared in this district.⁴

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed on February 11, 2013 in New York, New York.



Carlos. A. Rodriguez

⁴ See

<http://www.uscourts.gov/JudgesAndJudgeships/JudicialVacancies/JudicialEmergencies.aspx>.